No. 92-1816

Supreme Court, U.S.
FILED
MAY 29 1993
OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1992

EDWARD RAY GREER, et al.,

Petitioner,

vs.

ARTHUR LEE GASTON

Respondent.

Petition for Writ of Certiorari to the Court of Appeals of South Carolina

PETITION FOR WRIT OF CERTIORARI

EDWARD RAY GREER, Pro Se
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QUESTIONS PRESENTED

1. Did the Trial Judge commit error when he did not rule that Arthur Lee Gaston had settled 84-CP-12-212 and 84-CP-12-213 without authority?

2. Did the Trial Judge commit error when he did not rule that F. Matlock Elliott attorney for Arthur Lee Gaston had slandered Edward Ray Greer in open court before the jury of this case?

3. Did the Trial Judge commit error when he did not rule that Arthur Lee Gaston had engaged in Conflict of Interest when he represented Lilian Mary Greer and Edward Ray Greer?

LIST OF PARTIES

A. The following are entities interested in the outcome of this case:

The parties to the proceedings are the petitioner Edward Ray Greer and his wife Lilian Mary Greer, and the respondent Arthur Lee Gaston.

B. The following is the name of opposing law firm and counsel in this case:

Petitioner Edward Ray Greer, Pro Se, Rt. 1, Box 83-A, Fort Lawn, South Carolina 29714.

Counsel for Respondent, Arthur Lee Gaston, is F. Matlock Elliott Esquire, Haynsworth, Marion, McKay & Guerard, Post Office Box 2048, Greenville, South Carolina 29602.

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NO. _____

IN THE SUPREME COURT

OF THE

UNITED STATES OF AMERICA

October Term, 1992

Edward Ray Greer, et al., Petitioner,

vs.

Arthur Lee Gaston, Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF SOUTH CAROLINA

Petitioner, Edward Ray Greer, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the State of South Carolina Court of Appeals.

OPINIONS BELOW

The opinion of the Court of Appeals is reported as unpublished opinion No. 92-UP-146 Heard November 5, 1992 - Filed

November 18, 1992, and appears in Appendix A to this Petition.

JURISDICTION

The Court of Appeals Opinion in this matter was filed on November 18, 1992. A timely Petition for Rehearing was received November 24, 1992 in the Court of Appeals. The Court of Appeals' denial of the Petition for Rehearing was issued on November 30, 1992. A timely Petition For Writ of Certiorari was filed on December 21, 1992 with the Supreme Court of South Carolina. Petition for Writ of Certiorari denied February 18, 1993.

This Court's jurisdiction is invoked under Title 28, U.S.C. § 1254(1).

STATEMENT OF THE CASE

The action before the lower court is against Arthur Lee Gaston for settling Civil Actions No. 84-CP-12-212 and 84-CP-12-213 without authority.

It was commenced with the filing of

the Summons and Complaint about January 2, 1989 and with service upon Arthur Lee Gaston the same day.

The Complaint seeks judgment against Arthur Lee Gaston for loss of 4.14 acres of property and damages of Fifty Three Thousand Five Hundred Dollars, plus costs.

The defense was to deny that Arthur Lee Gaston had settled without authority.

The action was heard by the Honorable Luke N. Brown, Jr. on February 11, 12 & 13, 1991.

Jury verdict for Defendant Arthur Lee Gaston dated February 11, 1991.

Plaintiffs, Edward Ray Greer and Lilian Mary Greer appeals from the order of Judge Luke N. Brown, Jr. Service of Plaintiffs' Notice of Intent to Appeal was timely served upon Defendant's counsel on February 26, 1991.

ARGUMENT 1

a. "(1. Did the Trial Judge commit error when he did not rule that Arthur Lee Gaston had settled 84-CP-12-212 and 84-CP-12-213 without authority?)"

b. South Carolina Pocket Court Register

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"A lawyer who receives from opposing counsel an offer of settlement in a civil controversy or a proffered plea bargain in a criminal case should promptly inform the client of its substance unless prior discussions with the client have left it clear that the proposal will be unacceptable."

c. When the Respondent had told Judge Edward B. Cottingham (Judge for 84-CP-12-212 & 213) that he represented clients that would not be willing to discuss settlement and when I told the Respondent to "Start the trial" the Respondent can no longer entertain discussions of settlement from the other side.

d. Paul Hemphill for the other side had

agreed to settle by dividing the land in dispute. The Respondent knew that I was loosing at least 1.6 acres. The Respondent settled without me getting any of the land in dispute.

e. I won an admitted judgment in 85-CP-12-147, the damages were for the loss of 4.14 acres of land.

f. I had moved the Court through my letters to rule that Arthur Lee Gaston had settled 84-CP-12-212 and 213 without authority. (See Appendix C and D)

(Record On Appeal Page 18 Lines 2 thru 6 - Cross-Examination of Arthur Lee Gaston)

"A Did you ever tell me that you wanted to go ahead and start the trial? Is that the question?
Q Did I ever tell you "Please start the trial" or anything that means the same thing?
A Yes, Sir."

(R.O.A. P19L16thru22 - Cross-Examination of Arthur Lee Gaston)

"Q Did you know that -- Did I tell you before that we had the meeting

on September the 24th, 1985, here in this room, did I predict to you that Paul Hemphill would come and present me a settlement by giving me half of the property that was in dispute?
The Court: He's already answered that yes earlier.
A That is correct."

(R.O.A. P21L9thru12 - Cross-Examination of Arthur Lee Gaston)

"Q (By Mr. Greer) Did you ever say in any proceedings that the loss of property to me was only 1.6 acres, in any proceedings?
A Possibly so. Yes, Sir."

(R.O.A. P23L4&5 - Direct - J. Boyd Fisher, Surveyor)

"Q Was this 4.14 acres of property a loss for my property?
A Yes, Sir."

(R.O.A. P52L4thru7 - Cross-Examination of Arthur Lee Gaston)

"The Court: Have you made a Bona Fide effort to settle this case, the two-acre dispute?
Mr. Gaston: I think Paul and I both have clients, your honor, that would not be willing to discuss settlement."

(R.O.A. P54L7thru11 - Cross-Examination of Jeffrey Kim Roberts - Law Clerk for Judge Edward B. Cottingham)

"Q Okay. And when that Arthur Gaston announced that Mr. Greer agreed to the terms of the settlement, would you please find any place in Section Two where that Mr. Greer agreed with Arthur Gaston to the terms of the settlement?
A It's not in the transcript, Mr. Greer."

(R.O.A. P55L10,11 - Cross J.K. Roberts)

"Q You also stated that, you know, I didn't object, Mr. Greer didn't object, and, in fact, indicated his agreement."

(R.O.A. P55L14thru19 - Cross J.K. Roberts)

"A Yes, sir. That was my recollection when I gave that statement.
Q Would you please find any place---
A It's not ---
Q ---In there where that I have indicated my agreement ---
A You did not ---"

(R.O.A. P56L13thru23 - Cross J.K. Roberts)

"A Mr. Greer, let me explain. Judge Cottingham, again, when you put things on the record, he dealt directly with the attorneys in the case. He did not deal with the litigants. He dealt with their attorneys.
Q That is very true.
A That's his style.

Q He never ever talked ---
The Court: Wait a minute now.
A That's the way he conducted business, the way he conducts business. They're hired attorneys, and they -- he deals with their attorneys."

(R.O.A. P49L18thru23 - Direct - Lilian Mary Greer)

"Q What did this instruction consist of?
A Start the trial.
Q Did this happen just once?
A No. many times. At least three times.
Q Did Mr. Gaston ever ask your consent to settle these cases?
A No. He -- He ignored me."

(R.O.A. Page 48, Line 1&2 - Direct - Ottis D. Greer)

"2:30. After about half an hour of listening to proposals, did you hear me give any instructions to Arthur Gaston ---"

(R.O.A. P48L12thru21 - Direct - Ottis D. Greer)

"A Yes, I did. And I heard him tell him to start the trial. And then, not only that, but after a couple of times, I leaned up and told my brother, you know, "let's get this trial started," because it was dragging on a dragging on. It was getting later in the afternoon. There wasn't being any thing established.
Q How many times approximately do you think that I gave this instruction to

Arthur Gaston?

A I didn't count the times, but there were several times. And I would swear to at least three times."

(R.O.A. P17L3thru7 - Direct - Edward Ray Greer)

"Arthur Gaston came back and started to indicate another proposal when I told him, "Let's start the trial." Now, this I may have done in this two and half or three hour period, I probably did eight or ten times, but I at least did it three times."

(R.O.A. P17L14thru24 - Direct - Edward Ray Greer)

"There's been a settlement "and the Judge then started reading what the settlement was, I -- my attorney was sitting beside of me. I says, "I don't agree with that. Start the trial." He said, "Shh, be quiet." I looked at the Judge. He wouldn't make eye contact with me. He would look up over, over me, he would look up here. The other side was sitting back in the back huddled in a corner there, and he would never look in my direction here. So, I didn't -- I didn't know what to do. I had made it abundantly clear to Mr. Arthur Gaston that I did not want to settle this."

(R.O.A. P216 Letter)

"The moment you heard Arthur Lee

Gaston admit that I had told him many times to "Start the Trial" you should have ruled that Arthur Lee Gaston had settled 84-CP-12-212 and 213 without authority."

(R.O.A. P218 Letter)

"Mr. Arthur Lee Gaston argues that when I would say "Start the Trial" the other side would sweeten the deal.
The Court of Appeal has ruled that the land in dispute is 4.14 acres.
Mr. Gaston has admitted that Paul Hemphill had offered to settle by splitting the land that was in dispute.
Mr. Gaston settled the dispute without our side getting any of the land in dispute.
Arthur Lee Gaston settled C.A. 84-CP-12-212 and 213 without authority."

(R.O.A. P45L4thru18)

"Mr. Greer: Yeah. I move an arrest of the judgment and ---
The Court: That's in the nature of a criminal proceeding. I feel that you are protected as far as the appeals are concerned. But you've got 10 days if you want to -- and I'll give you that 10 days ---
Mr. Greer: Is it 10 or 30?
The Court: ---To serve me ---
Mr. Greer: Is it 10 or 30, sir?
The Court: 10 days to serve me and serve a copy of it on him any grounds that you feel that I should reverse this judgment.

> OKay? You've got 10 days. Now, you can just mail them to me during that time, and you can mail or give a copy to Mr. Elliott. And if you feel like you'd like to do that, I'll rule again in writing."

(Please See Appendix B,C&D)

The Judge has said that he will rule again in writing, his letter states that he does not understand my letter and does not want an explanation.

(See Appendix A - The South Carolina Court of Appeals)

> "3. The Greers' challenge to the sufficiency of the evidence to support the jury's verdict has no merit. There is evidence to support the finding implicit in the jury's verdict that Gaston did not settle the boundary dispute cases without authority. Aside from other evidence in the case supporting the jury's implicit finding, Gaston himself testified the Greers accepted the opposing parties' offer of settlement. See Hackler v. Earl Wiegand Real Estate, Inc., 295 S.C. 396, 368 S.E.2d 686 (Ct. App. 1988) (the court of appeals will not disturb the jury's findings unless a review of the record discloses no evidence reasonably supports them)."

The Respondent has admitted that I told him

to "Start the trial" many times, and the Respondent told Judge Cottingham that he represented clients that would not consider settlement, and the Respondent admitted that the other side had proposed a settlement by splitting the land in dispute, and the Respondent knew that I was loosing at least 1.6 acres of land, the Respondent settled C.A. 84-CP-12-212 & 213 without me getting any of the land in dispute. The Respondent settled without authority.

ARGUMENT 2

a. "(2. Did the Trial Judge commit error when he did not rule that F. Matlock Elliott attorney for Arthur Lee Gaston had slandered Edward Ray Greer in open court before the jury of this case?)"

b. (R.O.A. P26L16&17 - Closing Argument by Mr. Elliott)

"Because we know Mr. Greer doesn't like to pay people who work for him. He didn't pay Mr. Hager."

c. (R.O.A. P25L9,12&13 - Cross-Examination of Fred Hager)

"Q How much do I owe you?
A You stay down there sort of where you are, then we're -- You don't owe me nothing."

d. (See Appendix D)

"When you heard Matlock Elliott say that I would have people work for me and then not pay them. I think you knew that the record did not support that statement and that statement is not true. I think Matlock Elliott has slandered me in open court before the jury of this case. My damages for this statement are at least ten thousand dollars you should instruct the jury to determine the amount."

e. (R.O.A. P15L1thru5)

"exception to that; is that right?
The Court: Yes, sir. I'll tell you under the rules, Mr. Greer, you don't have to take exception to anything. Under the New Rules -- you used to -- But if you want to say that every time, I have no objection."

f. (R.O.A. Page 211 starting 16 lines from bottom)

"When this Court construes an exception, it will make its construction as liberal as the

language will allow, in order to decide the question involved, unless it is satisfied that the statement has misled the respondent to his prejudice. We hold that McFadden has not been misled by the questions presented nor has he been prejudiced thereby. Finally, this Court is concerned with the substance of an appeal, not technical differences in the issues raised by the exceptions. In connection with the remarks contained in this paragraph and the previous paragraph, see the case of Bartles v. Livingston 282 S.C. 448, 319 S.E.2d 707 (Ct. App. 1984)."

g. "Elements of a cause of action for "fraud" include false representation of a present or past fact made by defendant, action in reliance thereupon by plaintiff and damage resulting to plaintiff from such misrepresentation. Citizens Standard Life Ins. Co. v. Gilley, Tex.Civ.App., 521 S.W. 2d 354, 356.

It consists of some deceitful practice or willful device, resorted to with intent to deprive another of his right, or in some manner to do him an injury. As distinguished from negligence, it is always positive, intentional. It comprises all acts, omissions and concealments involving a breach of a legal or equitable duty and resulting in damage to another. And includes anything calculated to deceive, whether it

be a single act or combination of circumstances, whether the suppression of truth or the suggestion of what is false, whether it be by direct falsehood or by innuendo, by speech or by silence, by word of mouth, or by look or gesture. Fraud, as applied to contracts, is the cause of an error bearing on a material part of the contract, created or continued by artifice, with design to obtain some unjust advantage to the one party, or to cause an inconvenience or loss to the other."

h. (Final Brief of Respondent Page 18 Lines 1 thru 18)

"In Varnadore, counsel did not object to remarks made in closing argument until after closing arguments were completed and the jury had left the courtroom. The Supreme Court held that the objection was too late and said:

> The procedure to be followed when objection is taken to remarks of counsel in jury argument is set forth in Young v. Warr, 252 S.C. 179, 165 S.E.2d 797 (1969):
>
> We have held that the proper course to be pursued when counsel makes an improper argument is for opposing counsel to immediately object and to have a record made of

the statements or language complained of and to ask the court for a distinct ruling thereon. [Emphasis supplied (in the original)]"

i. I was deceived by the ruling of Judge Brown and the silence of the attorney for the Respondent concerning taking exceptions for appeal purposes.

j. I believe the attorney for the Respondent has changed his position concerning what should be said when taking an exception.

k. "Clean hands doctrine. Under "Clean hands" doctrine, equity will not grant relief to a party, who, as actor, seeks to set judicial machinery in motion and obtain some remedy, if such party in his prior conduct has violated conscience of good faith or other equitable principle. Franklin v. Franklin, 365 MO. 442, 283 S.W. 2d 483, 486."

l. (See Appendix A - The South Carolina Court of Appeals)

"1. We need not address the issue whether the trial judge erred in not ruling that the attorney for Gaston slandered the Greers during closing argument. The Greers did not object during the attorney's

closing argument. Rather, they complained for the first time in a new trial motion after the jury returned its verdict. Their complaint came too late and, therefore, the issue is not preserved for our review. Johnson v. Painter, 279 S.C. 390, 307 S.E.2d 860 (1983); Rental Uniform Serv. v. K & M Tool & Die, 292 S.C. 571, 357 S.E.2d 722 (Ct. App. 1987)."

m. The Court of Appeals has totally ignored the ruling by Judge Brown

"Yes,Sir. I'll tell you under the rules, Mr. Greer, you don't have to take exception to anything. Under the New Rules --- you used to --"

ARGUMENT 3

a. "(3. Did the Trial Judge commit error when he did not rule that Arthur Lee Gaston had engaged in Conflict of Interest when he represented Lilian Mary Greer and Edward Ray Greer?)"

b. South Carolina Pocket Court Register

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"For example, it has been held that a partner in a law firm is conclusively presumed to have access to all confidences concerning all clients of the firm. Under this analysis, if a lawyer has been a partner in one law firm and then becomes a partner

in another law firm, there may be a presumption that all confidences known by the partner in the first firm are known to all partners in the second firm."

c. South Carolina Pocket Court Register

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"When a lawyer has been directly involved in a specific transaction, subsequent representation of other clients with materially adverse interests clearly is prohibited."

d. "Conflict of Interest. Term used in connection with public officials and fiduciaries and their relationship to matters of private interest or gain to them. Ethical problems connected therewith are covered by statutes in most jurisdictions and by federal statutes on the federal level. Generally, when used to suggest disqualification of a public official from performing his sworn duty, term "Conflict of Interest" refers to a clash between public interest and the private pecuniary interest of the individual concerned. Gardner v. Nashville Housing Authority of Metropolitan Government of Nashville and Davison County, Tenn., C.A. Tenn., 514 F.2d38,41."

e. (R.O.A. P15L1thru5)

"exception to that; is that right?

The Court: Yes, sir. I'll tell you under the rules, Mr. Greer, you don't have to take exception to anything. Under the New Rules -- you used to -- But if you want to say that every time, I have no objection."

f. (R.O.A. Page 211 starting 16 lines from bottom)

"When this Court construes an exception, it will make its construction as liberal as the language will allow, in order to decide the question involved, unless it is satisfied that the statement has misled the respondent to his prejudice. We hold that McFadden has not been misled by the questions presented nor has he been prejudiced thereby. Finally, this Court is concerned with the substance of an appeal, not technical differences in the issues raised by the exceptions. In connection with the remarks contained in this paragraph and the previous paragraph, see the case of Bartles v. Livingston, 282 S.C. 448, 319 S.E.2d 707 (Ct. App. 1984)."

g. (See Appendix E, F&G)

The Respondent knew his firm had been representing Frank Boyd McFadden, and other related Matheson's from 1933 to 1982. The letter to me from Arthur

Lee Gaston requesting the Frank Boyd McFadden file be returned to his office proves that.

h. (R.O.A. P22L8,9,10,11&12 Direct of J. Boyd Fisher surveyor)

"Q Both of these are the property of Frank Boyd McFadden. They are -- one of them was made recently, '84, and the other one back in 1933. It's the same piece of property. It belongs to the same person. Does that seem right?

A Yes, Sir."

i. (R.O.A. Page 125&127)

Frank Boyd McFadden was Plaintiff in 84-CP-12-212.

j. (R.O.A. Page 159thru185 - Abstract of title for F.B. McFadden)

(R.O.A. Page 61L25 - P62L1,2,3,8,9&10)

"The Court: In other words you are saying because Mr. Gaston and the Hamiltons firm in 1934 certified a title to this same property ---
Mr. Greer: Yes, Sir.
The Court: All right, sir. I'm going to mark this as a court exhibit for appeal purposes, but I deny your use of this."

k. (R.O.A. P28L5,6&7 Cross-Examination of Arthur Lee Gaston)

"A Mr. Greer, you brought that up yesterday. I want you to know I take offense at your contending publicly time and time again that I represented both sides of a lawsuit."

l. (R.O.A. P28L14,15&16 Cross-Examination of Arthur Lee Gaston)

"A There was a Mary Lindsay Montgomery.
Q Yes, Sir.
A She's the Matheson's daughter.

m. (R.O.A. P128&130)

John W. Matheson and Martha Matheson

84-CP-12-213 Plaintiffs.

n. (R.O.A. Page 30L17thru25)

"A The first one is the summons in which I am appearing as attorney for petitioner, Michael Brian, a copy of that record. And it's got the clerk's seal on it so you show that it's been filed. Another one is where there was a Promissory Note by John Matheson to Mary Montgomery. And we compromised the note and got it settled, and I marked it paid in full as attorney for Mary Montgomery against the Matheson's The Court: Any objections?

Mr. Greer: I object."

o. July 31, 1982. John and Martha Matheson were Plaintiffs in 84-CP-12-213 and we were defendants represented by the Respondent. The Respondent had represented the interests of the Matheson family before he represented Lilian Mary Greer and Edward Ray Greer.

p. (R.O.A. P33L24&25, P34L1&2 - Cross-Examination Arthur Lee Gaston)

"Q Is the wife of John Matheson -- is she a McFadden to your knowledge?
A Not to my knowledge. I see her nodding her head. I see her nodding her head back there. Yes, Sir."

q. (R.O.A. P32L13,14&17 - Cross-Examination of Arthur Lee Gaston)

"Q Are you a relative of any of the McFaddens?
A Not to my knowledge.
A Well, that's as good as I can give."

r. Arthur Lee Gaston does not know if he is a relative of the McFaddens (The McFaddens are related to the

Matheson's).

s. I believe the Respondent is not allowed to act as my attorney unless he can state without reservations that he is not a relative of the other side.

t. (Please See Appendix F)
This is a Promissory Note by John and Martha Matheson for ten thousand dollars to be paid to their daughter Mary Montgomery. The Respondent had negotiated this note down to $9500.00 and this is an interest of $500.00 for John and Martha Matheson. This was clearly a transaction negotiated for John and Martha Matheson who were Plaintiffs in 84-CP-12-213 and my wife and I were defendants represented by the Respondent in 1985. The Promissor Note was paid off in July 31, 1982 the Respondent represented the Mathesons before he represented my wife and I.

u. (Please See Appendix G)
This is a letter written by the Respondent's father for Frank Boyd McFadden. "Macaulay has forwarded it to me as attorney for Mr. McFadden" this letter plus at least 25 other documents I believe prove that the Gaston firm represented Frank Boyd McFadden. Frank Boyd McFadden was Plaintiff in 84-CP-12-212 and my wife and I were defendants and we were represented by the Respondent.

v. (Please See Appendix E)
This is a letter from the Respondent to me asking for me to return the file of Frank Boyd McFadden to his office. The Respondent I believe was aware that his firm had represented F.B. McFadden before he represented me.

w. Judge Brown has made a motion without being prompted and has granted that motion at least one time during the pro-

ceedings.

x. (See Appendix A - The South Carolina Court of Appeals)

"2. We likewise need not address the issue of whether the trial judge erred in not ruling that Gaston had a conflict of interest when he represented the Greers. So far as we can determine, the Greers never asked the trial judge to make this ruling. In their brief, the Greers state they "objected to the court not ruling that Arthur Lee Gaston had engaged in [a] conflict of interest." They cite "P30L24&25 R.O.A." We interpret this to mean page 30, lines 24 and 25 of the record on appeal. What appears there is the following:

THE COURT: Any objection?
MR. GREER: I object.

The objection voiced by Mr. Greer came after Gaston's attorney moved to introduce a summons in which Gaston appeared as attorney for Michael Byron Montgomery and a promissory note from John W. Matheson and Martha M. Matheson to Mary M. Montgomery that Gaston, as attorney for Montgomery, had marked paid in full. The objection to these two documents, which was too general to be considered, hardly raises the issue that the Greers seek now to argue. See Piero v. Southern Express Co., 103 S.C. 467, 88 S.E. 269 (1916) (an objection

to testimony consisting of "I object to that" was too general for consideration); 88 C.J.S. Trial § 124, at 253 (1955) ("Likewise, 'I object' ... [is] general and [is] insufficient to call the attention of the court to the specific matter objected to.")."

REASON FOR GRANTING THE WRIT

I believe the South Carolina Supreme Court and the South Carolina Court of Appeals has sanctioned judicial proceedings by the Sixth Circuit Court that are so far departed from the accepted and usual course of judicial proceedings, as to call for an exercise of this Court's power of supervision. The following are examples of those proceedings:

1. (R.O.A. P43L9&10)

"I tried to make it plain to the jury that you sasn't skilled in courtroom procedure and I did it more than once."

I believe Judge Brown by repeating to the jury that I was not skilled in courtroom procedure day after day for

three days the Judge was successful in biasing the jury against me.

2. (R.O.A. P41L23,24&25)

"Mr. Greer: She ---
The Court: Who is this "she"?
Mr. Greer: This is Martha McFadden Matheson."

(R.O.A. P42L3,4&5)

"Mr. Greer: She was talking to my witness, Mr. J. Boyd Fisher, and telling him about her plat and that how long that it had been in existence and ---"

(R.O.A. P42L16thru19)

"The Court: All right, sir. I note your --- and what would you like for me to do about it?
Mr. Greer: Is tampering with witnesses a problem?
The Court: It could be,"

I believe Judge Brown has done anything that he can to help the Respondent prevent a fair trial. Martha McFadden Matheson was one of the parties to the Promissory Note negotiated by the Respondent (See Appendix F).

3. (R.O.A. P45L4thru18)

"Mr. Greer: Yeah. I moved an

arrest of the judgment and ---
The Court: That's in the nature of a criminal proceeding. I feel that you are protected as far as the appeals are concerned. But you've got 10 days if you want to -- and I'll give you that 10 days ---
Mr. Greer: Is it 10 or 30?
The Court: --- To serve me ---
Mr. Greer: Is it 10 or 30, sir?
The Court: 10 days to serve me and serve a copy of it on him any grounds that you feel that I should reverse this judgment. OKay?
You've got 10 days. Now, you can just mail them to me during that time, and you can mail or give a copy to Mr. Elliott. And if you feel like you'd like to do that, I'll rule again in writing."

(See Appendix D) "Your Honor: The moment you heard Arthur Lee Gaston admit that I had told him many times to "Start the trial" you should have ruled that Arthur Lee Gaston had settled 84-CP-12-212 and 213 without authority.

When you heard Matlock Elliott say that I would have people work for me and then not pay them. I think you knew that the record did not support that statement and that statement is not true. I think that Matlock Elliott has slandered me in open court before the jury of this case. My damages for this statement are at least ten thousand dollars, you should instruct the jury to determine the amount.

I made sure that the Clerk of Court

had provided you with the records of C.A.84-CP-12-212 and 213, C.A.85-CP-12-147 and I made you aware of the reversal of C.A.85-CP-12-147 and also of the admitted judgment in C.A.85-CP-12-147.

Judge James M. Morris found:
Confession of judgment by the defendant in the amount of $14,500.00 and the attorney and clients for both sides signed the agreement.
This all concerns C.A.85-CP-12-147.

The Court of Appeals ruling on C.A.85-CP-12-147. See Page 10 the second paragraph from the top "We hold that the attached plat and the admitted fact that Greer and McFadden agreed on the corners of the tract to be conveyed constitutes sufficient evidence to create a issue of merit for determination by the trier of the facts as to whether McFadden purported to convey the disputed property to Greer".

The attached plat shows a loss of 4.14 acres of property from the Greer tract."

(See Appendix C) "Your Honor:
Mr. Arthur Lee Gaston argues that when I would say "Start the Trial" the other side would sweeten the deal.

The Court of Appeals has ruled that the land in dispute is 4.14 acres.

Mr. Gaston has admitted that

Paul Hemphill has offered to settle by splitting the land that was in dispute.

Mr. Gaston settled the dispute without our side getting any of the land in dispute.

Arthur Lee Gaston settled C.A.84-CP-12-212 and 213 without authority."

On February 13, 1991 Judge Brown has said that he will rule in ten days in writing concerning any motions on any grounds concerning the reversal of this case.

(See Appendix B) "Dear Mr. Greer: This is to acknowledge receipt of your Certified letter of February 14, 1991, which frankly I do not understand and by copy to the Clerk of Court, I am requesting that she file this letter in the record of this case. I do not care for an explanation of this correspondence but merely wish to inform you, as I have already done, the limit of your time to appeal the jury's decision. Once I left the County, I have no further jurisdiction and suggest you correspond, if you care, to the administrative Judge for that circuit."

On February 13, 1991 Judge Brown ruled that he would arrest judgment until February 23, 1991.

I received from the Clerk of Court the judgment on February 16, 1991 and this judgment was dated February 11, 1991. I received the letter from Judge Brown dated February 22, 1991.

(See Appendix B)

This was the letter that Judge Brown said he would rule through. I think this is just one more thing that demonstrates the bad faith intentions of this Judge.

4. (R.O.A. P32L8thru19)

"Mr. Greer: Sir, can I please ask it -- would it be relevant to you if Arthur Gaston is a relative of the McFaddens?
Would that be relative?
The Court: Just ask him, are you related to the McFaddens?
Q Are you a relative of any of the McFaddens?
A Not to my knowledge.
The Court: He says No.
Mr. Greer: Not to his knowledge.
A Well, that's as good as I can give.
The Court: That's enough. Just a minute. That's all you're going to ask about his relatives and the McFaddens."

I believe Judge Brown is giving aid

and comfort to the Respondent that has a Conflict of Interest because he is related to the McFaddens and Mathesons while he was representing me against them.

5. (R.O.A. P15L1thru5)

"exception to that; is that right?
The Court: Yes, sir. I'll tell you under the rules, Mr. Greer, you don't have to take exception to any thing. Under the New Rules -- you used to -- But if you want to say that every time, I have no objection."

The South Carolina Court of Appeals and the South Carolina Supreme Court both act as if Judge Brown had not made this ruling, and the Respondent was silent.

6. (R.O.A. P64L14thru25 - P65L1thru21)

"The Court: --- About the 1934 Representation --- Mr. Greer: No. I don't want to do anything at this time.
The Court: Well, you had asked to make that an exhibit.
Mr. Greer: No, I didn't. I don't remember making that as an exhibit.
The Court: You said you wanted to do it because you said you wanted to show the bias. This is the file

you wanted to make an exhibit.
Mr. Greer: This is the one that you made -- Yes, you made it a Court ---
The Court: I made it a Court exhibit.
Mr. Greer: Yeah.
The Court: But would you like that exhibit to go to the Jury?
Mr. Greer: Oh, Yes, sure. Sure. I'm sorry.
The Court: I'm going to let her make a photocopy. I'll give them the original back and I'll give the jury as your exhibit. Do you have any objection to that?
Mr. Greer: Now, wait a minute. You're going to give the original to who?
The Court: I'm going to give the original back to where it belongs.
Mr. Greer: Well, I object to that.
The Court: Would you like this as a Court exhibit?
Mr. Greer: Yes, Sir. I want to get it back.
The Court: As your exhibit?
Mr. Greer: Yes, my exhibit.
The Court: All right. He wants this -- this is marked court's exhibit. Let's make it a Plaintiffs' exhibit. Give that to the Court Reporter. (Plaintiffs' Exhibit No. 9, previously marked a Court's exhibit No. 1, re-marked and received in evidence)"

Judge Brown has tried to give my original exhibits that I believe show that the Respondent's firm had represented the other side before the Respondent

represented me.

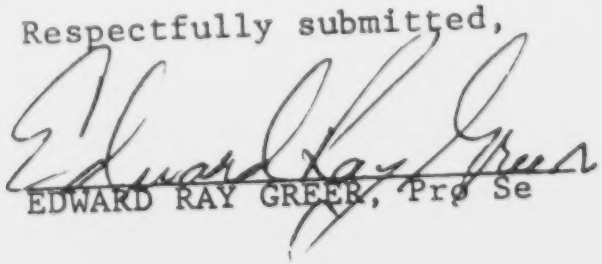
Judge Brown had denied my use of these court's exhibits and had said that they could be used on appeal. I believe Judge Brown was only trying to cover up the fact that this exhibit had not been allowed as evidence during the trial for Conflict of Interest.

CONCLUSION

For the reasons set forth above, a writ of certiorari should issue to review the judgment and opinion of the South Carolina Court of Appeals in this matter.

DATED: May 4, 1993

Respectfully submitted,



EDWARD RAY GREER, Pro Se

APPENDIX A

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

Edward Ray Greer and

Lilian Mary Greer, ... Appellants,

v.

Arthur Lee Gaston, ... Respondent.

Appeal from Chester County

Luke N. Brown, Jr., Judge

Unpublished Opinion No. 92-UP-146 Heard November 5, 1992 - Filed November 18, 1992

AFFIRMED

Edward Ray Greer and Lilian Mary Greer, both of Fort Lawn, pro se.

F. Matlock Elliott, of Greenville, for respondent.

PER CURIAM: Edward Ray Greer and Lilian Mary Greer brought this attorney malpractice action against Arthur Lee

Gaston claiming Gaston settled two boundary dispute cases without their authority. The jury found in Gaston's favor. The Greers appeal. The questions on appeal relate to the closing argument made by Gaston's attorney, the failure of the trial judge to rule that Gaston had a conflict of interest when he represented the Greers, and the sufficiency of the evidence to support the verdict. We affirm.

1. We need not address the issue of whether the trial judge erred in not ruling that the attorney for Gaston slandered the Greers during closing argument. The Greers did not object during the attorney's closing argument. Rather, they complained for the first time in a new trial motion after the jury returned its verdict. Their complaint came too late and, therefore, the issue is not preserved for our review. Johnson v. Painter, 279 S.C. 390, 307 S.E.2d

860 (1983); Rental Uniform Serv. v. K & M Tool & Die, 292 S.C. 571, 357 S.E.2d 722 (Ct. App. 1987).

2. We likewise need not address the issue of whether the trial judge erred in not ruling that Gaston had a conflict of interest when he represented the Greers. So far as we can determine, the Greers never asked the trial judge to make this ruling.

In their brief, the Greers state they "objected to the court not ruling that Arthur Lee Gaston had engaged in [a] conflict of interest." They cite P30L24&25 R.O.A." We interpret this to mean page 30, lines 24 and 25 of the record on appeal. What appears there is the following:

THE COURT: Any objection?
MR. GREER: I object.

The objection voiced by Mr. Greer came after Gaston's attorney moved to introduce a summons in which Gaston appeared as

attorney for Michael Byron Montgomery and a promissory note from John W. Matheson and Martha M. Matheson to Mary M. Montgomery that Gaston, as attorney for Montgomery, had marked paid in full. The objection to these two documents, which was too general to be considered, hardly raises the issue that the Greers seek now to argue. See Piero v. Southern Express Co., 103 S.C. 467, 88 S.E. 269 (1916) (an objection to testimony consisting of "I object to that" was too general for consideration); 88 C.J.S. Trial § 124, at 253 (1955) ("Likewise, 'I object' ... [is] general and [is] insufficient to call the attention of the court to the specific matter objected to.").

3. The Greers' challenge to the sufficiency of the evidence to support the jury's verdict has no merit. There is evidence to support the finding implicit in the jury's verdict that Gaston did not settle the boundary dispute cases without authority.

Aside from other evidence in the case supporting the jury's implicit finding, Gaston himself testified the Greers accepted the opposing parties' offer of settlement. See Hackler v. Earl Wiegand Real Estate, Inc., 295 S.C. 396, 368 S.E.2d 686 (Ct. App. 1988) (The Court of Appeals will not disturb the jury's findings unless a review of the record discloses no evidence reasonably supports them).

AFFIRMED.

JOHN P. GARDNER J.

C. TOLBERT GOOLSBY, JR. J.

C. BRUCE LITTLEJOHN A.J.

APPENDIX B

FOURTEENTH JUDICIAL CIRCUIT

Luke N. Brown,jr.,Judge
P.O. Box 879
Ridgeland, S.C. 29936

Jasper
Allendale -
Beaufort -
Colleton -
Hampton

February 22, 1991

Edward Ray Greer
Rt. 1, Box 83-A
Fort Lawn, South Carolina 29714

Dear Mr. Greer:

This is to acknowledge receipt of your certified letter of February 14, 1991, which frankly I do not understand and by copy to the Clerk of Court, I am requesting that she file this letter in the record of this case. I do not care for an explanation of this correspondence but merely wish to inform you, as I have already done, the limit of your time to appeal the jury's decision. Once I left the County, I have no further jurisdiction and suggest you

correspond, if you care, to the Administrative Judge for that Circuit.

Very truly yours,

Luke N. Brown, Jr.

LNBjr/tg

cc: Sue Carpenter
Clerk of Court
F. Matlock Elliott, Esquire

APPENDIX C

February 20, 1991

Honorable Judge Luke N. Brown, Jr.

Resident Judge 14th Circuit

Box 879

Ridgeland, S.C. 29936

Re: 89-CP-12-03

Your Honor:

Mr. Arthur Lee Gaston argues that when I would say "start the trial" the other side would sweeten the deal.

The Court of Appeal has ruled that the land in dispute is 4.14 acres.

Mr. Gaston has admitted that Paul Hemphill had offered to settle by splitting the land that was in dispute.

Mr. Gaston settled the dispute without our side getting any of the land in dispute.

Arthur Lee Gaston settled C.A.84-CP-12-

212 & 213 without authority.

Respectfully,

Edward Ray Greer, Pro Se

Rt. 1, Box 83-A

Fort Lawn, S.C. 29714

(803) 789-5038

ERG/lmg

cc: Sue K. Carpenter

cc: Matlock Elliott

APPENDIX D

February 14, 1991

Honorable Judge Luke N. Brown, Jr.

Resident Judge 14th Circuit

Box 879

Ridgeland, S.C. 29936

Re: 89-CP-12-03

Your Honor:

The moment you heard Arthur Lee Gaston admit that I had told him many times to "Start the Trial" you should have ruled that Arthur Lee Gaston had settled 84-CP-12-212 and 213 without authority.

When you heard Matlock Elliott say that I would have people work for me and then not pay them. I think you knew that the record did not support that statement and that statement is not true. I think Matlock Elliott has slandered me in open court before the jury of this case. My damages for this statement are at least ten thousand dollars you should instruct the jury to determine the amount.

I made sure that the Clerk of Court had provided you with the records of C.A.84-CP-12-212 & 213, C.A.85-CP-12-147 and I made you aware of the reversal of C.A.85-CP-12-147 and also of the admitted judgment in C.A.85-CP-12-147.

Judge James M. Morris found:

Confession of judgment by the defendant in the amount of $14,500.00 and the attorneys and clients for both sides signed the agreement.

This all concerns C.A.85-CP-12-147.

The Court of Appeals ruling on C.A.85-CP-12-147.

See Page 10 the second paragraph from the top "We hold that the attached plat and the admitted fact that Greer and McFadden agreed on the corners of the tract to be conveyed constitutes sufficient evidence to create an issue of merit for determination by the trier of the facts as to whether McFadden purported to convey the

disputed property to Greer".

The attached plat shows a loss of 4.14 acres of property from the Greer tract.

Respectfully,

Edward Ray Greer, Pro Se

Rt. 1, Box 83-A

Fort Lawn, S.C. 29714

(803) 789-5038

ERG/lmg

cc: Sue K. Carpenter

cc: Matlock Elliott

P.S. I have in hand the cross-examination of Arthur Lee Gaston, Judge John Matheson, F. Matlock Elliott C.S., and Fred J. Hager.

APPENDIX E

EXHIBIT "I"

GASTON, GASTON & MARION, P.A.
Attorneys at Law
124 Gadsden Street
P.O. Box 743
Chester, S.C. 29706

David A. Gaston
Arthur Lee Gaston
W.L.D. Marion

Telephone
(803)385-2114
FEID No.57-06930

October 9, 1985

Mr. and Mrs. Edward Ray Greer
Route 1, Box 83-A
Fort Lawn, S.C. 29714

Dear Mr. and Mrs. Greer:

When the two of you were in our office on October 1st and picked up various files in connection with the matter we were handling for you there was an old Federal Land Bank file regarding property of Frank B. McFadden (and perhaps others). This file cannot now be located in our office and is believed to have been inadvertently picked

up by you. I spoke with Ed concerning this matter several days ago. Since that time I have left word with Mrs. Greer for him to call me. It will be appreciated if you will verify whether or not you have this file, and, if so, please return it to our office. Thank you.

We have also incurred the following additional costs in connection with the several lawsuits which we have been handling for you: (1) Aerial photo map from Tax Assessor's office with property line in question removed, $3.50; (2) Aerial photo map from Tax Assessor's office with questioned property line shown, $3.50; (3) Sheriff's fee for service of subpoena on Terry Love, $10.00.

Yours very truly,

ARTHUR LEE GASTON

Arthur Lee Gaston

ALG/jam

Plaintiff's

Exhibit 10

APPENDIX F

$10,000.00 Chester,S.C. June ,1981

ON JULY 31, 1982, for value received I promise to pay to the order of MARY M. MONTGOMERY, the sum of TEN THOUSAND and NO/100 ($10,000.00) DOLLARS, with interest after maturity at the rate of ten (10%) per cent per annum. Makers and Endorsers waive presentment, demand and notice of protest. In the event this note is placed in the hands of an attorney for collection, then there shall be added to the balance due thereon interest and attorney's fees at the rate of fifteen (15%) per cent of the balance due.

JOHN W. MATHESON
JOHN W. MATHESON

Defendant's Exhibit 39

MARTHA M. MATHESON
MARTHA M. MATHESON

NOTE NO. 1

DUE: July 31, 1982.

Sale Price $37,000.00

Satisfy Old Mortgage 17,362.13

Received by Seller

from Borrower 9,637.87 June 15,1981

Balance Due Seller 10,000.00

Paid in Full in settlement amount of $9500.00 as agreed. A.L. Gaston attorney for Mary M. Montgomery, July 31, 1982

APPENDIX G

February 21, 1934

Atlantic Joint Stock Land Bank

Raleigh

North Carolina

Re - Loan #904 - F.B. McFadden

Dear Sirs:

Since receiving your letter of February 16th, Mr. A.H. Macaulay has forwarded it to me as attorney for Mr. McFadden in making application for him to the Federal Land Bank. This application was made at the request of your Bank; your Mr. John R. Williams of Rock Hill, S.C., brought Mr. McFadden to my office. Since you are not willing to accept the amount loaned by the Federal Land Bank it has become necessary for Mr. McFadden to make other arrangements. He has arranged to have his mortgage taken up by a private party here and I am therefore forwarding you cashier's check for $1,738.81 as per your letter to A.H. Macaulay of February 16th, 1934. This

check is not for the satisfaction of your mortgage but is for the assignment thereof to A.G. Westbrook. Please make the following indorsement on your mortgage and forward it to me with note attached: "For value received the within note and mortgage together with the debts secured thereby are hereby transfered and assigned without recourse to A.G. Westbrook." Then sign thereunder the name of your Bank by its duly authorized officer and on the left say: "In the Presence of:" and have two witnesses witness the execution of the assignment of mortgage. If this is done upon the mortgage paper itself it will not be necessary to have an affidavit probating the execution of the paper and the recording of the assignment will be more simple. The enclosed check is for the assignment of mortgage and not for satisfaction and we will therefore appreciate your accepting the check for assignment

of this mortgage and mailing the mortgage to us. You may also return the checks of the Federal Land Bank to Mr. Macaulay at Chester. The check enclosed is my personal check instead of cashier's check, the exchange being so high on a cashier's check now.

Yours very truly,

HAMILTON & GASTON

BY

DAG:D

Supreme Court, U.S.
FILED
JUN 3 1993
OFFICE OF THE CLERK

No. 92-1816

In The

Supreme Court of the United States

October Term, 1992

EDWARD RAY GREER, et al.,

Petitioners,

v.

ARTHUR LEE GASTON,

Respondent.

Petition For Writ Of Certiorari
To The Supreme Court Of South Carolina

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

F. Matlock Elliott
Haynsworth, Marion, McKay & Guerard
P.O. Box 2048
Greenville, South Carolina 29602
(803) 240-3200

Counsel of Record for Respondent

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

BEST AVAILABLE COPY

QUESTIONS PRESENTED

I. The Petition should be denied because the United States Supreme Court does not have jurisdiction over matters presented in Petition for Writ of Certiorari.

II. The Petition should be denied because the Petitioners' allegations have been fully aired and fairly disposed of at every level in the State courts of South Carolina.

A. The Petition should be denied because there is reasonable evidence to support the jury verdict in favor of the Respondent.

B. The Petition should be denied because there was no improper closing argument made by Respondent's counsel.

C. The Petition should be denied because the Greers did not raise issue of conflict of interest in support of their Motion for New Trial.

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STATEMENT OF THE CASE

The Petitioners, Mr. and Mrs. Greer, commenced this lawsuit by filing of a Summons and Complaint in the Court of Common Pleas for Chester County, South Carolina, on January 4, 1989. The Respondent, Mr. Gaston, timely answered the Summons and Complaint on February 3, 1989 and amended his Answer on March 3, 1989. This Summons and Complaint alleges legal malpractice against Mr. Gaston and has ultimately given rise to the Petition presently pending before this Court.

In the above captioned lawsuit, the Greers' Complaint alleges that Mr. Gaston settled two lawsuits without authority. These lawsuits are *John W. Matheson, et al. v. Edward Ray Greer, et al.*, C.A. No. 84-CP-12-213 (hereinafter "*Matheson* lawsuit") and *Frank B. McFadden v. Edward Ray Greer, et al.*, C.A. No. 84-CP-12-212 (hereinafter "*McFadden* lawsuit"). These two lawsuits involved a dispute over a property line between the Plaintiffs, the Mathesons and Mr. McFadden, on one side and the Greers, the Petitioners, on the other side of the property line. The Mathesons' and Mr. McFadden's claims were that the Greers were encroaching on their property. The Greers hired Mr. Gaston, the Respondent, to defend them in the *Matheson* and *McFadden* lawsuits.

In the *Matheson* and *McFadden* lawsuits, the Greers wanted the property line to be established through an old hickory stump with a piece of barbed wire on it. The line would have run from a poplar tree on the northeastern corner of the property through the hickory stump to a dogleg on the S.C. Highway 21 (western) side of the

property. The old hickory stump was the important reference point to the Greers, and the Greers had a Polaroid picture of the hickory stump at trial.

The *McFadden* and *Matheson* lawsuits were to be tried non-jury on September 24, 1985. A pre-trial conference was held during the morning. The presiding judge, the Honorable Edward B. Cottingham, suggested that the parties consider settling. Paul Hemphill, Jr., representing the Mathesons and Mr. McFadden, brought several settlement proposals to Mr. Gaston for the Greers to consider. Ultimately, Mr. McFadden and the Mathesons agreed to run the property line through the old hickory stump to the poplar tree on the back corner of the property. This was the way the Greers wanted the property line to run. This settlement proposal included the court appointment of two surveyors to establish the boundary line in dispute according to geographical references specified by Mr. and Mrs. Greer. The Greers agreed to this settlement proposal which was made during the afternoon of September 24, 1985. The Greers never disagreed with the final settlement proposal by telling Mr. Gaston to "start the trial." The Greers did not utter this phrase during the settlement negotiations in the afternoon. After the survey was completed, the Greers apparently did not like the resulting boundary line and sued Mr. Gaston.

A jury trial was held in the above captioned legal malpractice case against Mr. Gaston in Chester County on February 11, 12, and 13, 1991 with the Honorable Luke N. Brown, Jr. presiding. The jury rendered a verdict in favor of Mr. Gaston on February 13, 1991.

The Greers made a motion for a new trial after the jury verdict. This motion was denied. The Greers appealed from Judge Brown's denial of their motion for a new trial.

Briefs were filed, and oral argument was heard by the South Carolina Court of Appeals on November 5, 1992. The Court of Appeals filed an opinion on November 18, 1992 affirming the trial court. The Petitioners filed a Petition for Rehearing which was denied on November 30, 1992.

The Petitioners filed a Writ for Certiorari from the South Carolina Supreme Court to the Court of Appeals on or about December 21, 1992. This Petition was denied on February 18, 1993.

REASONS FOR DENYING THE PETITION

I. The Petition should be denied because the United States Supreme Court does not have jurisdiction over matters presented in Petition.

The United States Supreme Court does not have jurisdiction over the matters presented by the Petition for Writ of Certiorari. The matters covered by the Petition involve a common law tort, specifically legal malpractice. The alleged malpractice occurred between the Petitioners, Edward Ray Greer and Mrs. Greer, and their attorney, Arthur Lee Gaston, the Respondent, all residents of the State of South Carolina. Prior to the Petition to this Court,

the matters encompassed in the Petition have been exclusively heard by the state courts of the State of South Carolina.

There were no issues raised at any point in these proceedings or in the Petition to this Court which would invoke the jurisdiction of the United States Supreme Court under Article 3 of the United States Constitution, 28 U.S.C. § 1257, or Rule 10, Supreme Court Rules. As a result, lacking jurisdiction, the United States Supreme Court should deny the Petition for a Writ of Certiorari.

II. The Petition should be denied because the Petitioners' allegations have been fully aired and fairly disposed of at every level in the State courts of South Carolina.

The courts of the State of South Carolina have allowed the Greers to fully air their allegations against Mr. Gaston, and those courts have fairly reviewed and disposed of those allegations according to the applicable law.

Mr. and Mrs. Greer fully aired their allegations against Mr. Gaston during a three day trial in the Court of Common Pleas for Chester County, South Carolina. The jury returned a verdict in favor of Mr. Gaston.

The Greers appealed to the South Carolina Court of Appeals. The Greers fully briefed the grounds for their appeal to the Court of Appeals. These grounds are the same grounds that the Greers now urge in their Petition for review by this Court. The Court of Appeals heard oral

argument and affirmed the jury verdict in favor of Mr. Gaston.

The Greers petitioned for a Writ of Certiorari from the South Carolina Supreme Court to the Court of Appeals. These grounds are the same grounds that the Greers now urge in their Petition for review by this Court. This Petition was denied.

As the Greers' allegations have been fully aired both at the trial level and the appellate level in the courts of the State of South Carolina, the Greers have not suffered any deprivation that would invoke the jurisdiction of this Court. Further, no such deprivations have been set forth in the Greers' Petition. Arguments raised by the Greers in their Petition for a Writ of Certiorari before this Court, while not relevant, are discussed below.

A. The Petition should be denied because there is reasonable evidence to support the jury verdict in favor of the Respondent.

The Greers' basis for their Petition seems to be that the trial judge should have granted a new trial based on an insufficiency of evidence to support the jury verdict in favor of Mr. Gaston. The South Carolina Court of Appeals fully considered this issue and held:

> "There is evidence to support the finding implicit in the jury's verdict that Gaston did not settle the boundary dispute cases without authority."

(See Appendix A to Petition for Writ of Certiorari.) In South Carolina, a jury verdict on appeal will only be

overturned if a review of the record discloses no evidence reasonably supporting the verdict. *Graham v. Whitaker*, 282 S.C. 393, 321 S.E.2d 40 (1984); and *Hackler v. Earl Wiegand Real Estate, Inc.*, 295 S.C. 396, 368 S.E.2d 686 (S.C. App. 1988). As a result, the Greers have not suffered deprivation of rights which would invoke this Court's jurisdiction and review. Furthermore, there is sufficient evidence in the record of the South Carolina proceedings to reasonably support the jury verdict in favor of Mr. Gaston.

Witnesses testified at the trial of the legal malpractice case against Mr. Gaston that the Greers agreed to the terms of the settlement. By specifically agreeing to the settlement, the Greers ratified their attorney's actions, and they are estopped from complaining about the settlement. *See L.F.S. Corp. v. Kennedy*, 287 S.C. 162, 337 S.E.2d 209 (1985).

The terms of the settlement were announced in open court with all parties present. The Greers did not speak out and oppose the settlement. In addition, Judge Cottingham, the trial judge, specifically addressed the parties to the *Matheson* and *McFadden* lawsuits, including the Greers, in regard to their consent to the settlement and its terms. The Greers did not voice opposition to the settlement at this time. The Greers did not disagree with the final settlement proposal by telling Mr. Gaston to "start the trial." The Greers did not utter this phrase during the latter stage of the settlement negotiations.

By remaining silent, the Greers ratified the settlement. Such ratification may be implied from the client's negligence, inattention, or apparent acquiescence in the

compromise. *L.F.S. Corp. v. Kennedy*, 287 S.C. 162, 337 S.E.2d 209 (1985); *Ross v. State*, 250 S.C. 442, 158 S.E.2d 647 (1967); 7 Am.Jur.2d *Attorneys at Law* § 157 (1980); and *see also Irby v. Richardson*, 278 S.C. 484, 298 S.E.2d 452, 454 (1982).

More importantly, there are documents signed by Mr. Greer indicating that he and Mrs. Greer had approved of the settlement. In the Proposed Case and Exceptions, signed by Mr. Greer, in the appeal of *Greer v. Roy McFadden* (still another lawsuit which involved a general warranty deed and the same property line and which arose after the alleged unauthorized settlement), the Greers stated, in regard to the *Matheson* and *McFadden* lawsuits, that:

> "*the parties to those actions agreed* that the two surveyors appointed by the Court would run a line between the parties from the joint rear corner of the Matheson and Greer properties to a point on U.S. Highway 21 . . . " (Emphasis added.)

This is written evidence that the Greers agreed to the terms of the settlement of the *Matheson* and *McFadden* lawsuits.

After the alleged unauthorized settlement, the Greers filed a grievance against Mr. Gaston alleging only an exorbitant fee and a conflict of interest in regard to the *Matheson* and *McFadden* lawsuits. The Greers did not complain about Mr. Gaston settling the *Matheson* and *McFadden* lawsuits without authority anywhere in their grievance filings. However, the Greers did admit that they approved the settlement in their grievance filings. In a document filed by the Greers, Mr. Greer said that "it

was proposed to me to have the line follow the old fence which I had always preferred and *I agreed.*" (Emphasis added.) This is further written evidence that the Greers agreed to the terms of the settlement of the *Matheson* and *McFadden* lawsuits.

The Greers' arguments concerning the insufficiency of evidence to support a jury verdict in favor of Mr. Gaston are meritless. Furthermore, these arguments do not support the Greers' Petition to invoke the jurisdiction of this Court and contain no allegation of any deprivation of rights requiring this Court's review.

B. The Petition should be denied because there was no improper closing argument made by Respondent's counsel.

The Greers suggest that the following statement made by Respondent's counsel in closing argument at the legal malpractice trial was slanderous, and presumably prejudicial, requiring that the jury verdict be overturned: ". . . because we know Mr. Greer doesn't like to pay people who work for him. He didn't pay Mr. Hager." This statement cannot be the basis of granting the Petition.

In South Carolina, an objection to a statement made in closing argument must be made at the time the statement is made in order to be preserved for appeal. *Varnadore v. Nationwide Mut. Ins. Co.*, 289 S.C. 155, 345 S.E.2d 711, 714 (1986); *Johnson v. Painter*, 279 S.C. 390, 307 S.E.2d 860 (1983); and *Rental Uniform Service of Greenville, South Carolina, Inc. v. K&M Tool and Die, Inc.*, 292 S.C. 571, 357 S.E.2d 722, 724 (S.C. App. 1987).

The South Carolina Court of Appeals held that the Greers raised no objection during the closing argument to this statement, and as a result, they waived any right to question this statement. (See Appendix A to Petition for Writ of Certiorari.) The South Carolina Court of Appeals appropriately applied the law on this issue and allowed a full and fair hearing to the Greers and properly disposed of this matter. As a result, this Court should dismiss this ground of the Greers' Petition.

The Greers' Petition citing a discussion about an exception had nothing to do with closing argument and occurred at a different time. The context in which this discussion in the transcript arose dealt with an evidentiary matter during the course of trial and not at the time of closing argument.

Even if the Greers did not waive their rights by failing to object, the Greers have made no showing that this statement gives rise to grounds for granting their Petition. The Greers' selection of testimony cited in their Petition to contradict the statement in closing argument is misleading and taken out of context. The statement is based upon testimony in the trial record. Mr. Hager, a surveyor, testified that he was due compensation from the Greers for his work on the property line in question:

> Q. I thought you said awhile ago you wouldn't. If anybody wants a copy, you've got to have some money.
>
> A. That would be – let it be understood, Mr. Greer, that I spent three days of my life with two or three paid employees making a survey. And –

Q. You didn't get paid for it?

A. I am due compensation. Let it be understood, Mr. Greer, that I spent several hours of my life doing a survey for you, which, for some reason, you decided to hire another surveyor, and I never billed you, but you never attempted to settle with me.

It is clear from this testimony that Mr. Greer did not pay Mr. Hager and Mr. Hager expected to be paid. Finally, Mr. Hager, out of exasperation at the end of his cross examination, said the Greers owed him nothing. As a result, the statement made in the closing argument accurately reflected the testimony.

Moreover, the Greers' attack on Respondent's counsel is unfounded because the statement is absolutely privileged. The well-settled law in South Carolina is that attorneys are absolutely privileged for statements made in closing argument as long as the statements are relevant and pertinent to the issues involved. *Redfearn v. Pusser*, 276 S.C. 506, 280 S.E.2d 206 (1981) (defamatory matter contained in pleadings is absolutely privileged if pertinent and relevant to the issues in the case); *McKesson & Robbins, Inc. v. Newsome*, 206 S.C. 269, 33 S.E.2d 585, 587 (1945); *Wall v. Blalock*, 245 N.C. 232, 95 S.E.2d 450 (1956) (statements made by attorney in course of a trial are absolutely privileged provided the statements are material and pertinent); Annot., 61 A.L.R.2d 1300 (1958); 50 Am. Jur. 2d *Libel and Slander* § 246 (1970); RESTATEMENT (SECOND) OF TORTS § 586 (1977).

During the trial, the Greers raised the issue of the excessiveness of Mr. Gaston's fee, and their dissatisfaction with it, for his work on the *Matheson* and *McFadden*

lawsuits. In fact, prior to filing the grievance, Mr. Greer demanded that the monies the Greers paid to Mr. Gaston be refunded, or the Greers threatened to file a grievance. The statement made in closing argument was pertinent and relevant because it showed the Greers' dissatisfaction with others who worked for them and their dislike of paying for goods and services they received. Furthermore, since the Greers brought up the alleged excessiveness of Mr. Gaston's fee, and their dissatisfaction with it, this issue had to be dealt with in closing argument.

Under this heading of their Petition, the Greers slip in argument concerning fraud and the elements thereof. Fraud has never been part of the above captioned lawsuit at either the trial or appellate levels. The Petitioner's complaint did not contain a cause of action for fraud. Fraud was not a cause of action tried in the legal malpractice lawsuit which has given rise to this Petition. As a result, there is no basis for the Greers making fraud an issue in or grounds for their Petition.

The Greers' arguments concerning alleged slander are meritless. Furthermore, these arguments do not support the Greers' Petition to invoke the jurisdiction of this Court and contain no allegation of any deprivation of rights requiring this Court's review.

C. The Petition should be denied because the Greers did not raise issue of conflict of interest in support of Motion for New Trial.

There is nothing in the record of the proceedings which indicates that the Greers moved for a new trial, or sought any other type of relief, on the basis of any alleged

conflict of interest involving Mr. Gaston. The Greers only point to Mr. Greer's objection to the introduction into evidence of two trial exhibits. As there was no basis in the record for raising this issue on appeal, the South Carolina Court of Appeals correctly held that the Greers had failed to carry their burden of furnishing a sufficient record to determine error in this regard. (See Appendix A to-Petition for Writ of Certiorari.) *Hamilton v. Greyhound Lines East*, 281 S.C. 442, 316 S.E.2d 368 (1984); and *Hobgood v. Pennington*, 300 S.C. 309, 387 S.E.2d 690, 693 (S.C. App. 1989). This Court should dismiss this ground of the Greers' Petition.

Furthermore, there was no conflict of interest. The Greers appear to claim two separate instances of a conflict of interest: (1) representation by Mr. Gaston's father of Frank B. McFadden in a loan closing in 1933; and (2) prior representation of Mr. and Mrs. Matheson. These allegations of conflicts of interest have no merit.

In 1933, David A. Gaston, Mr. Gaston's father, closed a loan to Frank B. McFadden from the Federal Land Bank. In a loan closing, the attorney represents the lender. There is no evidence that Mr. Gaston or his father represented Frank B. McFadden at any time prior to the filing of the *McFadden* lawsuit. In the *McFadden* lawsuit, Paul Hemphill represented Frank B. McFadden. Mr. Gaston has also never represented Mr. and Mrs. Matheson. Paul Hemphill represented the Mathesons in the *Matheson* lawsuit. Mr. Gaston has represented two other parties in opposition to the interests of Mr. and Mrs. Matheson prior to the filing of the *Matheson* lawsuit. In a divorce

action, Mr. Gaston represented the husband of the Mathesons' daughter. Later, Mr. Gaston represented the Mathesons' daughter in a dispute that the daughter had with her parents concerning an outstanding loan and the repayment of a promissory note. There is no evidence that Mr. Gaston ever represented Mr. and Mrs. Matheson in any matter.

The Greers' arguments concerning the alleged conflict of interest are meritless. Furthermore, these arguments do not support the Greers' Petition to invoke the jurisdiction of this Court and contain no allegation of any deprivation of right requiring this Court's review.

CONCLUSION

As there are no issues raised in the Petition, or at any point in the proceedings involved in the above captioned case, which invoke the jurisdiction of the United States Supreme Court under Article 3 of the United States Constitution, 28 U.S.C. § 1257, or Rule 10, this Court should deny the Petition for Writ of Certiorari.

Respectfully submitted,

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